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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 200616-0160]

RIN 0648-BH61

**Pacific Island Fisheries; Swordfish Trip Limits in the
American Samoa Pelagic Longline Fishery**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to remove the swordfish retention limit in the American Samoa deep-set longline fishery. NMFS originally implemented the limit as part of a suite of gear and operational requirements intended to discourage shallow-set fishing, thus reducing interactions with green sea turtles. The gear requirements have reduced green sea turtle interactions, and the swordfish retention limit is not needed. The proposed rule would remove the unnecessary restriction that results in the discard of small amounts of marketable swordfish that could otherwise be supplied as seafood. The proposed rule is intended to promote efficiency in the fishery.

DATES: NMFS must receive comments by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0123, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0123>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd, Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

The Western Pacific Fishery Management Council (Council) and NMFS prepared a regulatory amendment, including an environmental assessment (EA), that describes the potential impacts on the human environment that could result from the proposed rule. The regulatory amendment is available at www.regulations.gov, or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, NMFS PIR Sustainable Fisheries, 808-725-5173.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage the American Samoa deep-set longline fishery under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) and implementing regulations, as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The fishery targets South Pacific albacore, and occasionally catches other pelagic fish, such as swordfish. In 2011, based on a Council recommendation in FEP Amendment 5, NMFS implemented gear requirements that were intended to reduce interactions with green sea turtles (76 FR 52888, August 24, 2011). That rule also implemented a limit of 10 swordfish that may be retained on a fishing trip for vessels over 40 ft. The 10-fish limit was intended to discourage switching from deep-set gear targeting

albacore to shallow-set gear targeting swordfish because shallow-set fishing may interact more frequently with green sea turtles than deep-set fishing.

The deep-set gear requirements, including setting hooks below 100 m, have reduced interactions with green sea turtles. The number of swordfish caught per trip has been small, and there has been no evidence that longline fishermen have targeted swordfish. Based on logbook data from 2010 through 2018, the average annual catch rate of swordfish ranged from 0.0008 to 0.03 swordfish per 1,000 hooks. From 2008 through 2018, the number of swordfish caught ranged from 0.6 to 2.8 fish per trip. The most recent stock assessment of Southwest Pacific swordfish, conducted in 2017, indicated the swordfish stock is neither overfished nor subject to overfishing. See the regulatory amendment and the **Classification** section for details about catch and revenue in this fishery.

The current requirement for vessels over 40 ft to discard any swordfish in excess of the 10-fish limit results in wasteful discards, potential lost revenues, and an unnecessary reduction in seafood available to the Nation. The American Samoa longline fishery is facing challenging economic conditions and the Council recommended that NMFS remove the swordfish limit to provide relief.

Removing the swordfish limit would allow fishermen to retain a few more swordfish that might be caught incidentally during deep-set fishing, while maintaining safeguards for green sea turtles through the existing gear restrictions. All other management measures (including a limited vessel participation, prohibited fishing areas, fishery observers, logbook reporting, vessel monitoring systems, and gear and operational requirements) would remain in place and continue to apply in the fishery.

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would remove the limits on the number of swordfish that may be landed or possessed during any given American Samoa-based longline fishing trip south of the Equator. Currently, a longline vessel over 40 ft may keep no more than 10 swordfish on any given trip. Under the proposed rule, there would be no limit on the number of swordfish landed or kept per trip. All other measures applicable to the fishery would remain unchanged. The proposed rule intends to reduce regulatory discards and optimize the yield of swordfish.

This rule would directly affect vessels that hold American Samoa longline limited entry Class B, C, and D permits. Class A permit holders are exempt from the current swordfish retention requirement. As of May 15, 2020, 43

vessels held American Samoa longline limited entry Class B, C, and D permits, but the potential number of affected vessels could be as high as 60, which is the total number of permits available. According to logbook information, twelve American Samoa longline vessels within these class size permit categories actively fished in 2018 (four Class C and eight Class D). No Class B vessels actively fished in recent years.

Based on data provided in logbooks and observer records, a total of approximately 21,500 lb of swordfish may have been discarded due to the swordfish trip limit among all vessels from 2013 through 2016. At the 2018 market price of \$3.37/lb, and assuming that none of those discards were due to shark predation, small size, or other factors contributing to low marketability, those discards would have represented a loss of total fleetwide revenue of approximately \$72,000 over the four years, or an annual fleetwide loss in revenue of just over \$18,000. Using the average number of Class C and D longline vessels that actively fished in 2017 and 2018, this would represent an annual loss in potential revenue of \$1,393 per active vessel. Not all swordfish retained would have been sold in the local markets; some would be retained for onboard consumption, kept for personal consumption and/or given

away to the local community, as is customary in American Samoa.

NMFS estimates the average annual 2015-2018 gross ex-vessel value of pelagic fish landed by the American Samoa-based longline fishery to be about \$5.075 million (all years adjusted to 2018 dollars). Based on the average number of vessels fishing during those years, the average annual revenue would be just over \$300,000 per active vessel. NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels that are currently permitted federally under the FEP are small entities.

Under the proposed action, American Samoa-based longline fishermen would be able to keep more swordfish than what is currently allowed, resulting in an additional revenue gain of up to \$1,393 per active vessel per year.

The other action alternative that was considered would allow the retention of up to 25 swordfish per trip for a trip where no observer is on board the vessel, and an unlimited amount of swordfish if an observer is on board. The preferred action was selected because deep-set gear restrictions have reduced green sea turtle interactions, there has been no evidence that fishermen switch to shallow-setting on unobserved trips, and this action would be preferred by small entities.

Under the proposed action, the American Samoa longline fishery managed under the Pelagic FEP is not expected to expand substantially nor change the manner in which they are currently conducted (i.e., area fished, number of vessels longline fishing, number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear). The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed rule based on gear type, or relative vessel size. The proposed rule also will not place a substantial number of

small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Longline, Pacific Islands, Seafood, Swordfish.

Dated: June 16, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory
Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.813, revise paragraph (k) introductory text and remove paragraph (k)(5) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(k) *South Pacific Longline Requirements.* When fishing south of the Equator (0° lat.) for western Pacific pelagic MUS, owners and operators of vessels longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to § 665.801 must use longline gear that is configured according to the requirements in paragraphs (k)(1) through(4) of this section.

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